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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/414,333	10/07/1999	GEORGE KRAFT IV	AT9-99-288	3165
7590	02/27/2004		EXAMINER	
JOSEPH P LALLY DEWAN & LALLY LLP P O BOX 684749 AUSTIN, TX 787684749			CALLAHAN, PAUL E	
			ART UNIT	PAPER NUMBER
			2137	
DATE MAILED: 02/27/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No.	Applicant(s)	
	09/414,333	KRAFT IV ET AL.	
	Examiner	Art Unit	
	Paul E. Callahan	2137	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 07 January 2004.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-3,5-11,13-19 and 21-24 is/are rejected.
- 7) Claim(s) 4,12 and 20 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 07 October 1999 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| <ol style="list-style-type: none"> 1)<input checked="" type="checkbox"/> Notice of References Cited (PTO-892) 2)<input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) 3)<input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____. | <ol style="list-style-type: none"> 4)<input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____. 5)<input type="checkbox"/> Notice of Informal Patent Application (PTO-152) 6)<input type="checkbox"/> Other: _____. |
|--|--|

DETAILED ACTION

Response to Amendment

1. Claims 1-24 are pending in this application and have been examined.
2. The Affidavit and Disclosure Document filed on 1-7-04 under 37 CFR 1.131 is sufficient to overcome the Lambert '447 reference.

Claim Rejections - 35 USC § 112

3. Claims 7-9, 15, 16, 23 and 24 were rejected in the previous Office Action under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The changes made to the language of the claims in the latest amendment are sufficient to overcome these rejections.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

5. Claims 1, 2, and 5-7, are rejected under 35 U.S.C. 102(a) as being clearly anticipated by Klemba et al. US 5,651,068.

As per claim 1, Klemba teaches an encryption method, comprising: determining a geographic location associated with a software program; selecting an encryption level based

upon the determined geographic location; and executing the software program utilizing the selected encryption level (abstract, fig. 1, col. 2 lines 1-25 and 60-67, col. 3 lines 23-37).

As per claim 2, Klemba teaches a step wherein determining the geographic location comprises determining the geographic location of a computer system on which the software program will be executed (col. 3 lines 23-37).

As per claim 5, Klemba teaches overriding the selected encryption level responsive to receiving an encryption override signal (col. 7 lines 1-17).

As per claim 6, Klemba teaches the encryption override signal is received from a Smart Card I/O device of a computer system on which the software program will execute (col. 7 lines 1-17, fig. 2 item 12).

As per claim 7, Klemba teaches selecting an encryption level comprises selecting an encryption level from a set of encryption levels including at least a first encryption level corresponding to a first geographic location, a second encryption level corresponding to a second geographic location, and a third level corresponding to a third geographic location (col. 5 lines 30-45, col. 7 lines 1-17).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 3, 8, 9, 11, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Klemba and Official Notice taken infra.

As per claims 3, 11, and 19, Klemba fails to teach the use of GPS in the determination of location information for a computing device. However, Official Notice may be taken that the use of GPS in the determination of geographic location for a computing device is a step that is old and well known in the art of encrypted communications. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to have incorporated this step into the system of Klemba. Klemba teaches the advantage of a mobile user being able to determine geographic location in portable device such as personal digital assistants in col. 5 lines 1-3, and in col. 9 lines 9-35 where law enforcement officers may need precise location information about a user such as can easily be obtained with GPS.

As per claims 8, and 9, Klemba teaches all of the limitations of claims upon which these claims depend, however he does not teach that a first encryption level comprises a 128-bit encryption level, or that a second encryption level comprises a 40-bit encryption level. However

Official Notice may be taken that the use of 128 bit encryption and 40 bit encryption in communications protocols involving mobile computing devices is old and well known in the art. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate these features into the system of Klemba. It would have been desirable to do so as this would increase the geographic areas in which the system of Klemba could operate and hence increase the utility of the system.

As per independent claim 10 and it's dependent claims 13-16, these claims represent the apparatus for carrying out the method of claims 1-3 and 5-9, and are rejected on the same basis as those claims.

As per independent claim 17, and its dependent claims 18, and 21-24, these claims represent the set of computer program instructions embodied in a memory means and causing the apparatus to carry out the method of claims 1-3 and 5-9, and are therefore rejected on the same basis as those claims.

Allowable Subject Matter

8. Claims 4, 12, and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

9. The following is a statement of reasons for the indication of allowable subject matter:

The prior art does not teach a computing device configured as that found in the claimed invention and carrying out the method found in the claimed invention where the computing

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul E. Callahan whose telephone number is (703) 305-1336. The examiner can normally be reached on M-F from 9 to 5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Morse, can be reached on (703) 308-4789. The fax phone number for the

organization where this application or proceeding is assigned is: (703) 872-9306. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

Paul Callahan

2/18/04


GREGORY MORSE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100